

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 553 of 1999

to

FIRST APPEAL No 619 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SPL.LAQ OFFICER

Versus

AMARSINH MANSINH

Appearance:

MR RC KODEKAR, AGP for Appellants

MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

Date of decision: 29/08/2000

ORAL (COMMON) JUDGEMENT

(Per: J.M. Panchal, J.)

All these appeals which are filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 are directed against judgment and award dated March 17, 1998 rendered by the Learned 2nd Extra Assistant Judge, Khera at Nadiad in Land Reference Cases No.438 of 1994 to 449 of 1994, 324 of 1994 to 340 of 1994, 751 of 1994 to 762 of 1994, 767 of 1994 to 781 of 1994 and 740 of 1994 to 750 of 1994 by which it is held that the claimants are entitled to compensation at the rate of Rs.1500/- per Are for the acquired lands.

2. The Executive Engineer of Narmada Project for Main Canal had proposed to the State Government to acquire agricultural lands of Village Kosam, Taluka Kapadwanj, District Nadiad for the public purpose of Narmada Project Main Canal. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of Village Kosam were likely to be needed for the said public purpose. Accordingly, different Notifications under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) were issued which were published in the Official Gazette on (i) June 25, 1990 for the lands which were the subject matter of Land Acquisition Reference Nos. 438 of 1994 to 449 of 1994 (ii) June 25, 1990 for the lands which were the subject matter of Land Acquisition Reference Nos.324 of 1994 to 340 of 1994 (iii) March 26, 1990 for the lands which were the subject matter of Land Acquisition Reference Nos.751 of 1994 to 762 of 1994 (iv) January 8, 1991 for the lands which were the subject matter of Land Acquisition Reference Nos.767 of 1994 to 781 of 1994 and (v) January 29, 1991 for the lands which were the subject matter of Land Acquisition Reference Nos.740 of 1994 to 750 of 1994. The owners of the lands whose lands were proposed to be acquired were served with notice under Section 4 of the Act and they had filed their objections against the proposed acquisition. After considering the objections, the Special Land Acquisition Officer, Narmada Project, Vadodara had forwarded his report to the State Government, as contemplated under Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands which were specified in the different Notifications published under Section 4(1) of the Act were needed for public purpose of

Narmada Project Main Canal. Therefore, declarations under Section 6 of the Act were also made which were duly published in the Official Gazette. Thereafter, the interested persons were served with notice for determination of compensation. The Land Acquisition Officer by different awards dated November 11, 1992, July 10, 1992, June 30, 1993, June 21, 1993 and June 21, 1993 offered compensation to the claimants at the rate of Rs.330/- per Are for irrigated lands and Rs.220/- per Are for non-irrigated lands. The claimants were dissatisfied with the offer of compensation made by the Land Acquisition Officer and accepted the compensation under protest. They filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to court for determination of appropriate compensation. Accordingly, References were made to the District Court, Khera at Nadiad which were numbered, as mentioned earlier.

3. In the Reference Applications, it was averred by the claimants that as the claimants were cultivating three types of crops in a year and were earning Rs.30,000/- per bigha as net profit, they were entitled to compensation at the rate of Rs.10,000/- per Are. It was also claimed in the Reference Applications that Village Kosam had facilities such as milk dairy, post office, bus services etc. and therefore, the claimants should be granted compensation at the rate of Rs.10,000/- per Are. The Reference Applications were contested by the appellants vide written statement Exh.8 wherein it was pleaded that the determination of compensation by the Land Acquisition Officer was just as well as proper and, therefore, the Reference Applications should be dismissed. Upon rival assertions of the parties, necessary issues for determination were framed by the Reference Court at Exh.9. On behalf of the claimants, one of the claimants named Harising Udesing was examined at Exh.103. The witness deposed before the court that the lands acquired were highly fertile and claimants were taking crop of vegetables like potato, tomato, chillies, brinjal, flowers etc. According to the witness, the claimants were also raising the crop of til, millet, wheat, castor and varyali. The witness further claimed before the court that most of the claimants were earning more than Rs.30,000/- per bigha as net profit and even the wells as well as tube wells situated in the acquired lands were very costly. The witness stated that Villages Jetpura and Vaghavat were adjacent to Village Kosam and Village Vaghavat was not bigger in size than Village Kosam. In cross-examination, the witness informed the Court that the claimants were getting 81 maund wheat and

70 maund millet from 1 bigha. The witness produced village Form No.7/12 relating to the acquired lands at Exhs.13 to 98 to substantiate his claim that the claimants were raising crops of vegetables and other crops, as mentioned in his examination in chief. The claimants also produced at Exh.99 certified copy of evidence of expert Mohanlal Parsottambhai who was examined on behalf of Government in an altogether another case i.e. Land Acquisition Reference No.356 of 1994. The certified copy of detailed schedule prepared by expert Mohanlal Parsottambhai indicating produce, cost of raising crops and net profit was produced by the claimants at Exh.100. A copy of magazine known as Krishi Jivan which was prepared by the expert Mohanlal Parsottambhai was produced at Exh.12/89 whereas award showing grant of compensation for wells in Village Vanghroli was produced at Exh.101. The certified copy of the price-list issued by Kapadwanj Taluka Agricultural Produce Market Committee for the year 1990-91 was produced by the claimants at Exh.102.

4. On behalf of the appellants, no witness was examined to substantiate the claim advanced in the written statement. However, the Joint Measurement Sheet prepared for agricultural lands of Village Kosam was produced at Exh.106 whereas certified copy of paragraph 104 of the Land Acquisition Rules was produced at Exh.107. The appellants had also produced village Form No.16 for the well at Exh.108 and submitted written arguments at Exh.112.

5. On appreciation of evidence led by the parties, the Reference Court held that all the claimants were cultivating the crop of vegetables like Guvar, tomato, chilly, brinjal, potato, flowers etc. and were also raising crops of variyali and millet or potato and millet. In ultimate analysis, the Reference Court deduced that the market price should be assessed on the basis of the annual yield of vegetables like Guvar in kharif season and wheat in ravi season as one pattern and millet in kharif season and wheat in ravi season as second pattern. Placing reliance on the deposition of expert Mohanlal as well as detailed data which was produced at Exh.100 and the magazine produced at Exh.12/89, the Reference Court held that the minimum yield of millet was 3000 Kg per hectare and the income from the said crop was Rs.7,500/- per hectare. So far as the crop of vegetable Guvar is concerned, the Reference Court held that the minimum yield of Guvar was 8000 Kg per hectare and income from the said crop was Rs.32,000/per hectare. The Reference Court further held

that the minimum yield of wheat was 6000 Kg per hectare and the income derived by the claimants from the said crop was Rs.14,800/- per hectare. The Reference Court thereafter totalled yield of different crops and recorded a finding that the average of yield of 2 patterns was Rs.34,550/- per hectare but deducted 10% amount therefrom on the basis that some exaggeration might have been made by the claimants and held that the income from yield was Rs.31,095/- per hectare. In view of the decision of the Supreme Court in State of Gujarat vs. Rama Rana [1997 (3) GLR 1954], the Reference Court held that 50% of the value of crops should be treated as cost for raising the crops and multiplier of 10 should be adopted for determining compensation payable to the claimants. In ultimate result, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs.1,500/- per Are by the impugned judgment giving rise to the present appeals.

6. Mr. R.C. Kodekar, learned Assistant Government Pleader submitted that village Forms No.7/12 produced by the witness of the claimants with regard to the acquired lands do not show that each claimant was raising the crop of millet, guvar or wheat and, therefore, compensation determined by the Reference Court irrespective of the crop which was being raised by respective claimant is illegal, invalid and not recognised by principles governing determination of compensation on yield basis in land acquisition cases. The learned counsel submitted that the so called expert Mohanlal Parsottambhai was never examined as one of the witnesses in the case, and therefore, certified copy of his deposition recorded in an altogether different case i.e. Land Acquisition Case No.356 of 1994 could not have been admitted in evidence nor certified copy of detailed schedule prepared by him could have been relied upon for the purpose of determining compensation payable to the claimants. What was emphasised was that as the claimants had failed to lead cogent and reliable evidence for claiming higher compensation, the Reference Applications ought to have been dismissed by the Reference Court. The learned counsel further pleaded that the impugned judgment is vitiated by error apparent on the face of the record and as it would be difficult for this court to embark upon appreciation of inadmissible evidence for determination of compensation payable to the claimants, the appeals should be allowed.

7. Mr. A.J. Patel, learned counsel for the claimants pleaded that though the claimants should have produced the statistics from the Agricultural Department

as to the nature of crops and the prices prevailing at that time, the Court should not reject the oral evidence of the witness on that ground alone and the assessment of compensation made by the Reference Court should be upheld. In the alternative, the learned counsel submitted that the scheme of the Land Acquisition Act is such that the claimants should be paid adequate compensation for the lands acquired and as there is paucity of evidence, the matter should be remitted to the Reference Court with liberty to the claimants to lead evidence in the matter so as to enable them to claim just compensation for their acquired lands.

8. We have heard the learned counsel for the parties and taken into consideration the evidence on record. As observed earlier, only one of the claimants named Harising Udesing was examined by the claimants at Exh.103. Though the witness produced village Form No.7/12 relating to the acquired lands, he could not furnish better particulars about the crops raised by the different claimants and income derived from the sale of those crops. Though the witness asserted before the court that each claimant was earning Rs.30,000/- per hectare by way of net profit, he could not substantiate the said assertion by production of reliable documentary evidence. A look at village Forms No.7/12 relating to the acquired lands makes it abundantly clear that most of the claimants were not taking crop of guvar, wheat or millet and therefore, we are of the confirmed opinion that the Reference Court was not justified in awarding the compensation to all the claimants on the basis that each claimant was raising crop of guvar, millet and wheat. Moreover, the certified copy of deposition of expert Mohanlal Parsottambhai recorded in another case could not have been received in evidence without examination of the said expert as one of the witnesses in the case nor could have been acted upon for the purpose of determining compensation payable to the claimants. So also, reliance placed by the Reference Court on certified copy of detailed schedule prepared by expert Mohanlal Parsottambhai and Krishi Jivan magazine for assessing market value of the lands acquired is contrary to the provisions of Indian Evidence Act. The judgment which is impugned in the present group of appeals is vitiated by an error apparent on the face of the record and in spite of our best efforts, it is difficult for this court to embark upon appreciation of evidence and record a finding that the market value determined by the Reference Court is just, fair and reasonable. We find that the impugned award is unsustainable, as compensation is not determined on legal, valid, reliable and acceptable evidence.

However, it is well settled that the claimants are entitled to just compensation for their acquired lands and they should not be deprived of their legal right to receive compensation for paucity of evidence. It is relevant to notice that no rebuttal evidence was led by the present appellants to substantiate the claim which was advanced by them in the written statement Exh.8. Having regard to the totality of facts and circumstances of the case, we are of the opinion that interest of justice would be served if the matters are remitted to the Reference Court with liberty to all the parties to lead evidence on the basis of which the Reference Court should redetermine compensation payable to the claimants.

9. For the foregoing reasons, the appeals are accepted. The impugned common award dated March 17, 1998 rendered by the Learned 2nd Extra Assistant Judge, Khera at Nadiad in Land Reference Cases, numbers of which are mentioned earlier, is hereby set aside. All the matters are remitted to the Reference Court for redetermination of compensation in accordance with law. The parties will be entitled to lead evidence in support of their respective claims before the Reference Court and after hearing the parties, appropriate award redetermining compensation shall be passed by the Reference Court. The references shall be decided by the Reference Court as early as possible and preferably, within six months from the date of receipt of the writ. The appeals are accordingly allowed with no orders as to costs.

(J.M. Panchal, J.)

(M.C. Patel, J.)

hki